

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NOS. 420 & 344
93RD GENERAL ASSEMBLY

Reported from the Committee on Judiciary, April 27, 2005 with recommendation that House Committee Substitute for Senate Committee Substitute for Senate Bill Nos. 420 & 344 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

1373L.04C

AN ACT

To repeal sections 92.755, 105.711, 210.117, 210.950, 211.038, 238.216, 452.340, 455.516, 461.005, 472.060, 475.010, 475.045, 478.255, 478.550, 478.570, 478.600, 483.260, 483.537, 486.200, 488.031, 488.445, 488.607, 488.5030, 494.430, 494.432, 516.130, 534.090, 536.100, 545.550, 557.036, 590.080, 590.120, 590.180, 600.042, 600.086, and 650.055, RSMo, and to enact in lieu thereof forty-seven new sections relating to judicial procedures and personnel, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 92.755, 105.711, 210.117, 210.950, 211.038, 238.216, 452.340, 455.516, 461.005, 472.060, 475.010, 475.045, 478.255, 478.550, 478.570, 478.600, 483.260, 483.537, 486.200, 488.031, 488.445, 488.607, 488.5030, 494.430, 494.432, 516.130, 534.090, 536.100, 545.550, 557.036, 590.080, 590.120, 590.180, 600.042, 600.086, and 650.055, RSMo, are repealed and forty-seven new sections enacted in lieu thereof, to be known as sections 44.045, 92.755, 105.711, 210.117, 210.950, 211.038, 217.860, 238.216, 452.340, 455.516, 455.524, 461.005, 472.060, 475.010, 475.045, 475.046, 478.255, 478.550, 478.570, 478.600, 483.537, 486.200, 488.014, 488.031, 488.445, 488.607, 488.5019, 488.5030, 494.430, 494.432, 516.130, 534.090, 536.100, 536.142, 545.550, 557.036, 590.080, 590.120, 590.180, 600.042, 600.086, 650.055, 1, 2, 3, 4, and 5, to read as follows:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

44.045. 1. Subject to approval by the state emergency management agency during an emergency declared by the governor or state legislature, any health care professional licensed, registered, or certified in this state who volunteers to be so deployed may be deployed to provide care as necessitated by the emergency.

2. In a declared state of emergency, the department of health and senior services or the division of professional registration within the department of economic development may release otherwise confidential contact and licensure, registration, or certification information relating to health care professionals to state, local, and private agencies to facilitate deployment.

92.755. 1. Within thirty days after the filing of such suits with the circuit clerk, the collector shall forthwith cause a notice of foreclosure to be **posted on the affected property and to be** published four times, once a week, during successive weeks, and on the same day of each week, in a daily newspaper of general circulation regularly published in such city, qualified according to law for the publication of public notices and advertisements.

2. Such notice shall be in substantially the following form:

NOTICE OF FORECLOSURE OF LIENS FOR DELINQUENT
LAND TAXES, BY ACTION IN REM

Public notice is hereby given that on the day of ..., 20..., the Collector of Revenue of, Missouri, filed a petition, being suit No. ..., in the Circuit Court of Missouri, at (stating the city), for the foreclosure of liens for delinquent land taxes (except liens in favor of the United States of America, if any) against the real estate situated in such city, all as described in said petition.

The object of said suit is to obtain from the court a judgment foreclosing the tax liens against such real estate and ordering the sale of such real estate for the satisfaction of said tax liens thereon (except liens in favor of the United States of America, if any), including principal, interest, penalties, attorney's fees and costs. Such action is brought against the real estate only and no personal judgment shall be entered therein.

The serial number assigned by the collector to each parcel of real estate, a description of each such parcel, a statement of the total principal amount of all delinquent tax bills against each such parcel of real estate, all of which, as to each parcel, is more fully set out and itemized in the aforesaid petition, and the name of the last known person appearing on the records of the collector in whose name said tax bills were listed or charged for the year preceding the calendar year in which the list described in said petition was filed with the collector, are, respectively, as follows:

(Here set out the respective serial numbers, descriptions, names and statements of total principal amounts of tax bills, next above referred to.)

The total principal amounts of delinquent taxes set out in this notice do not include the lawful interest, penalties, attorney's fees and costs which have accrued

against the respective parcels of real estate, all of which in each case is set out and itemized in the aforesaid petition. Any person or taxing authority owning or holding any tax bill or claiming any right, title or interest in or to, or lien upon, any such parcel of real estate must file an answer to such suit in the office of the circuit clerk of the aforesaid city, and a copy of such answer with the collector of revenue at the office of the collector of revenue of said city, on or before the day of ..., 20..., and in such answer shall set forth in detail the nature and amount of such interest and any defense or objection to the foreclosure of the tax liens, or any affirmative relief he and it may be entitled to assert with respect thereto.

Any person having any right, title or interest in or to, or lien upon, any parcel of such real estate may redeem such parcel of real estate by paying all of the sums mentioned therein, to the undersigned Collector of Revenue, including principal, interest, penalties, attorney's fees and costs then due, at any time prior to the time of the foreclosure sale of such real estate by the sheriff.

In the event of failure to answer or redeem on or before the date herein fixed as the last day for filing answer in the suit, by any person having the right to answer or redeem, such person shall be forever barred and foreclosed as to any defense or objection he might have to the foreclosure of such liens for delinquent taxes and a judgment of foreclosure may be taken by default. Redemption may be made, however, up to the time fixed for the holding of sheriff's foreclosure sale, and thereafter there shall be no equity of redemption and each such person having any right, title or interest in or to, or any lien upon, any such parcel of real estate described in the petition so failing to answer or redeem, as aforesaid, shall be forever barred and foreclosed of any right, title, or interest in, or lien upon, any equity of redemption in said real estate.

.....
.
Collector of
Revenue

.....,
Missouri
(Name of
City)
Address

.....Attorney.....Address

..... First Publication

105.711. 1. There is hereby created a "State Legal Expense Fund" which shall consist of moneys appropriated to the fund by the general assembly and moneys

otherwise credited to such fund pursuant to section 105.716.

2. Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against:

(1) The state of Missouri, or any agency of the state, pursuant to section 536.050 or 536.087, RSMo, or section 537.600, RSMo, **except for agencies created under the provisions of chapter 84, RSMo;**

(2) Any officer or employee of the state of Missouri or any agency of the state, including, without limitation, elected officials, appointees, members of state boards or commissions, and members of the Missouri national guard upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency of the state, provided that moneys in this fund shall not be available for payment of claims made under chapter 287, RSMo; or

(3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse, or other health care provider licensed to practice in Missouri under the provisions of chapter 330, 332, 334, 335, 336, 337 or 338, RSMo, who is employed by the state of Missouri or any agency of the state, under formal contract to conduct disability reviews on behalf of the department of elementary and secondary education or provide services to patients or inmates of state correctional facilities or county jails on a part-time basis;

(b) Any physician licensed to practice medicine in Missouri under the provisions of chapter 334, RSMo, and his professional corporation organized pursuant to chapter 356, RSMo, who is employed by or under contract with a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, or a city health department operating under a city charter, or a combined city-county health department to provide services to patients for medical care caused by pregnancy, delivery, and child care, if such medical services are provided by the physician pursuant to the contract without compensation or the physician is paid from no other source than a governmental agency except for patient co-payments required by federal or state law or local ordinance;

(c) Any physician licensed to practice medicine in Missouri under the provisions of chapter 334, RSMo, who is employed by or under contract with a federally funded community health center organized under Section 315, 329, 330 or 340 of the Public Health Services Act (42 U.S.C. 216, 254c) to provide services to patients for medical care caused by pregnancy, delivery, and child care, if such medical services are provided by the physician pursuant to the contract or employment agreement without compensation or the physician is paid from no other source than a governmental agency or such a federally funded community health center except for patient co-payments required by federal or state law or local ordinance[. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense

fund shall be limited to a maximum of one million dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause against any such physician, and shall not exceed one million dollars for any one claimant];

(d) Any physician licensed pursuant to chapter 334, RSMo, who is affiliated with and receives no compensation from a nonprofit entity qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which offers a free health screening in any setting or any physician, nurse, physician assistant, dental hygienist, or dentist licensed or registered pursuant to chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides medical, dental, or nursing treatment within the scope of his license or registration at a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, a city health department operating under a city charter, or a combined city-county health department, or a nonprofit community health center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if such treatment is restricted to primary care and preventive health services, provided that such treatment shall not include the performance of an abortion, and if such medical, dental, or nursing services are provided by the physician, dentist, physician assistant, dental hygienist, or nurse without compensation. Medicaid or medicare payments for primary care and preventive health services provided by a physician, dentist, physician assistant, dental hygienist, or nurse who volunteers at a free health clinic is not compensation for the purpose of this section if the total payment is assigned to the free health clinic. For the purposes of the section, "free health clinic" means a nonprofit community health center qualified as exempt from federal taxation under Section 501 (c)(3) of the Internal Revenue Code of 1987, as amended, that provides primary care and preventive health services to people without health insurance coverage for the services provided without charge. [In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars.] Liability or malpractice insurance obtained and maintained in force by or on behalf of any physician, dentist, physician assistant, dental hygienist, or nurse shall not be considered available to pay that portion of a judgment or claim for which the state legal expense fund is liable under this paragraph; or

(e) Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or registered to practice medicine, nursing, or dentistry or to act as a physician assistant or dental hygienist in Missouri under the provisions of chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides medical, nursing, or dental treatment within

the scope of his license or registration to students of a school whether a public, private, or parochial elementary or secondary school, if such physician's treatment is restricted to primary care and preventive health services and if such medical, dental, or nursing services are provided by the physician, dentist, physician assistant, dental hygienist, or nurse without compensation[. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars]; or

[(4)] (f) Staff employed by the juvenile division of any judicial circuit; or

[(5)] (g) Any attorney licensed to practice law in the state of Missouri who practices law at or through a nonprofit community social services center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or through any agency of any federal, state, or local government, if such legal practice is provided by the attorney without compensation[. In the case of any claim or judgment that arises under this subdivision, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars]; or

(h) Any claims against a health care professional who is deployed under the provision of section 44.045, RSMo, in which the claim is based on acts or omissions occurring during a period of deployment.

In the case of any claim or judgment that arises under this subdivision, the aggregate of payments from the state legal expense fund shall be limited to a maximum of one million dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased under section 105.721 shall be limited to five hundred thousand dollars.

3. The department of health and senior services shall promulgate rules regarding contract procedures and the documentation of care provided under paragraphs (b), (c), (d), and (e) of subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to the provisions of section 105.721, provided in subsection 6 of this section, shall not apply to any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision

(3) of subsection 2 of this section. Any claim or judgment arising under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721, to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance obtained and maintained in force by any physician, dentist, physician assistant, dental hygienist, or nurse for coverage concerning his or her private practice and assets shall not be considered available under subsection 6 of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section. However, a physician, nurse, dentist, physician assistant, or dental hygienist may purchase liability or malpractice insurance for coverage of liability claims or judgments based upon care rendered under paragraphs (c), (d), and (e) of subdivision (3) of subsection 2 of this section which exceed the amount of liability coverage provided by the state legal expense fund under those paragraphs. Even if paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is repealed or modified, the state legal expense fund shall be available for damages which occur while the pertinent paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section is in effect.

4. The attorney general shall promulgate rules regarding contract procedures and the documentation of legal practice provided under subdivision (5) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to section 105.721 as provided in subsection 6 of this section shall not apply to any claim or judgment arising under subdivision (5) of subsection 2 of this section. Any claim or judgment arising under subdivision (5) of subsection 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721 to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance otherwise obtained and maintained in force shall not be considered available under subsection 6 of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under subdivision (5) of subsection 2 of this section. However, an attorney may obtain liability or malpractice insurance for coverage of liability claims or judgments based upon legal practice rendered under subdivision (5) of subsection 2 of this section that exceed the amount of liability coverage provided by the state legal expense fund under subdivision (5) of subsection 2 of this section. Even if subdivision (5) of subsection 2 of this section is repealed or amended, the state legal expense fund shall be available for damages that occur while the pertinent subdivision (5) of subsection 2 of this section is in effect.

5. All payments shall be made from the state legal expense fund by the commissioner of administration with the approval of the attorney general. Payment from

the state legal expense fund of a claim or final judgment award against a physician, dentist, physician assistant, dental hygienist, or nurse described in paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section, or against an attorney in subdivision (5) of subsection 2 of this section, shall only be made for services rendered in accordance with the conditions of such paragraphs. **In the case of any claim or judgment against an officer or employee of the state or any agency of the state upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state or any agency of the state that would give rise to a cause of action under section 537.600, RSMo, the state legal expense fund shall not pay more than five hundred thousand dollars to any one claimant, and is exclusive and precludes any other civil actions or proceedings for money damages arising out of or relating to the same subject matter against the state officer or employee, or the officer's or employee's estate. Notwithstanding any other provision of law to the contrary, the state legal expense fund shall not pay more than the occurrence limitation established in sections 537.600 to 537.610, RSMo.**

6. Except as provided in subsection 3 of this section, in the case of any claim or judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri, or an agency of the state, the aggregate of payments from the state legal expense fund and from any policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed the limits of liability as provided in sections 537.600 to 537.610, RSMo. No payment shall be made from the state legal expense fund or any policy of insurance procured with state funds pursuant to section 105.721 unless and until the benefits provided to pay the claim by any other policy of liability insurance have been exhausted.

7. The provisions of section 33.080, RSMo, notwithstanding, any moneys remaining to the credit of the state legal expense fund at the end of an appropriation period shall not be transferred to general revenue.

8. For any claim or final judgment for which payment is sought from the legal expense fund under subsection 2 of this section, such payment from the legal expense fund shall be the exclusive remedy for any claim against an individual covered by this section.

9. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority delegated in sections 105.711 to 105.726 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to

chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

210.117. [No] **1. A child taken into the custody of the state shall *not* be reunited with a parent or placed in a home in which the parent or any person residing in the home has been found guilty of, or pled guilty to, [a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, when a child was the victim, or a violation of section 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, when a child was the victim, or an offense committed in another state when a child is the victim, that would be a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, or a violation of section 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, or 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, if committed in Missouri; provided however, nothing in this section shall preclude the division from exercising its discretion regarding the placement of a child in a home in which the parent or any person residing in the home has been found guilty of or pled guilty or nolo contendere to any offense excepted or excluded in this section] **any of the following offenses when a child was the victim:****

(1) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206, 566.209, 566.212, or 566.215, RSMo;

(2) A violation of section 568.020, RSMo;

(3) A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;

(4) A violation of section 568.065, RSMo;

(5) A violation of section 568.080, RSMo;

(6) A violation of section 568.090, RSMo; or

(7) A violation of section 568.175, RSMo.

2. For all other violations of offenses in chapters 566 and 568, RSMo, not specifically listed in subsection 1 of this section or for a violation of an offense committed in another state when a child is the victim that would be a violation of chapter 566 or 568, RSMo, if committed in Missouri, the division may exercise its discretion regarding the placement of a child taken into the custody of the state in which a parent or any person residing in the home has been found guilty of, or pled guilty to, any such offense.

3. A minor shall be prohibited from returning to or residing in any residence located within one thousand feet of the residence of the abused child, or any child care facility or school that the abused child attends until the abused child reaches eighteen years of age, if:

(1) A court of competent jurisdiction determines that the minor has abused

another child; or

(2) The division determines based on a substantiated report of child abuse that a minor has abused another child. Such minor shall be prohibited from returning to or residing in any residence, facility, or school under this section unless and until a court of competent jurisdiction finds that the minor has not abused another child.

The prohibitions of this subsection shall not apply where the alleged abuse occurred between siblings.

210.950. 1. This section shall be known and may be cited as the "Safe Place for Newborns Act of 2002". The purpose of this section is to protect newborn children from injury and death caused by abandonment by a parent, and to provide safe and secure alternatives to such abandonment.

2. As used in this section, the following terms mean:

(1) "Hospital", as defined in section 197.020, RSMo;

(2) "Nonrelinquishing parent", the biological parent who does not leave a newborn infant with any person listed in subsection 3 of this section in accordance with this section;

(3) "Relinquishing parent", the biological parent or person acting on such parent's behalf who leaves a newborn infant with any person listed in subsection 3 of this section in accordance with this section.

3. A parent shall not be prosecuted for a violation of section 568.030, 568.032, 568.045 or 568.050, RSMo, for actions related to the voluntary relinquishment of a child up to five days old pursuant to this section and it shall be an affirmative defense to prosecution for a violation of sections 568.030, 568.032, 568.045 and 568.050, RSMo, that a parent who is a defendant voluntarily relinquished a child [no less than six days old but] no more than [thirty days] **one year** old pursuant to this section if:

(1) Expressing intent not to return for the child, the parent voluntarily delivered the child safely to the physical custody of any of the following persons:

(a) An employee, agent, or member of the staff of any hospital, in a health care provider position or on duty in a nonmedical paid or volunteer position;

(b) A firefighter or emergency medical technician on duty in a paid position or on duty in a volunteer position; or

(c) A law enforcement officer;

(2) The child was no more than [thirty days] **one year** old when delivered by the parent to any person listed in subdivision (1) of this subsection; and

(3) The child has not been abused or neglected by the parent prior to such voluntary delivery.

4. A person listed in subdivision (1) of subsection 3 of this section shall, without

a court order, take physical custody of a child the person reasonably believes to be no more than [thirty days] **one year** old and is delivered in accordance with this section by a person purporting to be the child's parent. If delivery of a newborn is made pursuant to this section in any place other than a hospital, the person taking physical custody of the child shall arrange for the immediate transportation of the child to the nearest hospital licensed pursuant to chapter 197, RSMo.

5. The hospital, its employees, agents and medical staff shall perform treatment in accordance with the prevailing standard of care as necessary, to protect the physical health or safety of the child. The hospital shall notify the division of family services and the local juvenile officer upon receipt of a child pursuant to this section. The local juvenile officer shall immediately begin protective custody proceedings and request the child be made a ward of the court during the child's stay in the medical facility. Upon discharge of the child from the medical facility and pursuant to a protective custody order ordering custody of the child to the division, the division of family services shall take physical custody of the child. The parent's voluntary delivery of the child in accordance with this section shall constitute the parent's implied consent to any such act and a voluntary relinquishment of such parent's parental rights.

6. In any termination of parental rights proceeding initiated after the relinquishment of a child pursuant to this section, the juvenile officer shall make public notice that a child has been relinquished, including the sex of the child, and the date and location of such relinquishment. Within thirty days of such public notice, the nonrelinquishing parent wishing to establish parental rights shall identify himself or herself to the court and state his or her intentions regarding the child. The court shall initiate proceedings to establish paternity, or if no person identifies himself as the father within thirty days, maternity. The juvenile officer shall make examination of the putative father registry established in section 192.016, RSMo, to determine whether attempts have previously been made to preserve parental rights to the child. If such attempts have been made, the juvenile officer shall make reasonable efforts to provide notice of the abandonment of the child to such putative father.

7. (1) If a relinquishing parent of a child relinquishes custody of the child to any person listed in subsection 3 of this section in accordance with this section and to preserve the parental rights of the nonrelinquishing parent, the nonrelinquishing parent shall take such steps necessary to establish parentage within thirty days after the public notice or specific notice provided in subsection 6 of this section.

(2) If a nonrelinquishing parent fails to take steps to establish parentage within the thirty-day period specified in subdivision (1) of this subsection, the nonrelinquishing parent may have all of his or her rights terminated with respect to the child.

(3) When a nonrelinquishing parent inquires at a hospital regarding a child whose custody was relinquished pursuant to this section, such facility shall refer the

nonrelinquishing parent to the division of family services and the juvenile court exercising jurisdiction over the child.

8. The persons listed in subdivision (1) of subsection 3 of this section shall be immune from civil, criminal, and administrative liability for accepting physical custody of a child pursuant to this section if such persons accept custody in good faith. Such immunity shall not extend to any acts or omissions, including negligent or intentional acts or omissions, occurring after the acceptance of such child.

9. The division of family services shall:

(1) Provide information and answer questions about the process established by this section on the statewide, toll-free telephone number maintained pursuant to section 210.145;

(2) Provide information to the public by way of pamphlets, brochures, or by other ways to deliver information about the process established by this section.

10. Nothing in this section shall be construed as conflicting with section 210.125.

211.038. [No] **1. A child under the jurisdiction of the juvenile court shall not be reunited with a parent or placed in a home in which the parent or any person residing in the home has been found guilty of, or pled guilty to, [a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, when a child was the victim, or a violation of sections 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, and 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, when a child was the victim, or an offense committed in another state when a child is the victim, that would be a felony violation of chapter 566, RSMo, except for section 566.034, RSMo, or a violation of sections 568.020, 568.045, 568.060, 568.065, 568.070, 568.080, 568.090, and 568.175, RSMo, except for subdivision (1) of subsection 1 of section 568.060, RSMo, if committed in Missouri; provided however, nothing in this section shall preclude the juvenile court from exercising its discretion regarding the placement of a child in a home in which the parent or any person residing in the home has been found guilty of or pled guilty or nolo contendere to any offense excepted or excluded in this section] any of the following offenses when a child was the victim:**

(1) A felony violation of section 566.030, 566.032, 566.040, 566.060, 566.062, 566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111, 566.151, 566.203, 566.206, 566.209, 566.212, or 566.215, RSMo;

(2) A violation of section 568.020, RSMo;

(3) A violation of subdivision (2) of subsection 1 of section 568.060, RSMo;

(4) A violation of section 568.065, RSMo;

(5) A violation of section 568.080, RSMo;

(6) A violation of section 568.090, RSMo; or

(7) A violation of section 568.175, RSMo.

2. For all other violations of offenses in chapters 566 and 568, RSMo, not specifically listed in subsection 1 of this section or for a violation of an offense committed in another state when a child is the victim that would be a violation of chapter 566 or 568, RSMo, if committed in Missouri, the juvenile court may exercise its discretion regarding the placement of a child under the jurisdiction of the juvenile court in a home in which a parent or any person residing in the home has been found guilty of, or pled guilty to, any such offense.

3. If the juvenile court determines that a minor has abused another child, such minor shall be prohibited from returning to or residing in any residence located within one thousand feet of the residence of the abused child, or any child care facility or school that the abused child attends until the abused child reaches eighteen years of age. The prohibitions of this subsection shall not apply where the alleged abuse occurred between siblings.

217.860. 1. There is hereby created within the department of corrections a "Task Force on Alternative Sentencing". The primary duty of the task force is to develop a statewide plan for alternative sentencing programs for nonviolent offenders. The plan shall include, but not be limited to, the following:

- (1) Public-private partnerships;
- (2) Job training;
- (3) Job placement;
- (4) Conflict resolution treatment; and
- (5) Alcohol and drug rehabilitation.

2. In developing this statewide plan the task force shall at a minimum acquire and review the following information:

- (1) The cost per year to incarcerate one nonviolent offender;
- (2) The cost of the proposed alternative sentencing program or programs per year;
- (3) The estimated number per year, for the past five years, of incarcerated nonviolent offenders who were eligible to have been placed on probation had there been in existence a suitable alternative sentencing program;
- (4) The recidivism rate for different types of nonviolent offenses; and
- (5) A list of the top five cities or regions of the state which have produced the largest number of nonviolent offenders for the last five years.

3. The task force created in this section shall be comprised of the following members or their designees from the entity represented:

- (1) The director;
- (2) The director of the division of probation and parole;
- (3) Six probation and parole officers or supervisors, one from each of the six regions of the state, who shall be appointed by the director of the division of

probation and parole;

(4) One member of the department of economic development's workforce development office who shall be appointed by the director of the department of economic development;

(5) Two circuit or associate circuit judges from circuits which have drug courts, who shall be appointed by the chief justice of the Missouri supreme court;

(6) Three chief executive officers of three different private businesses that employ a minimum of twenty employees each who shall be appointed by the governor; and

(7) Two prosecuting attorneys who shall be appointed by the governor.

4. The task force shall meet at least quarterly and shall submit its recommendations and statewide plan for an alternative sentencing program or programs to the governor, to the general assembly, and to the director by December 31, 2006.

5. Members of the task force shall receive no additional compensation but shall be eligible for reimbursement for mileage directly related to the performance of task force duties.

6. The provisions of this section terminate on May 31, 2007.

238.216. 1. Except as otherwise provided in section 238.220 with respect to the election of directors, in order to call any election required or allowed under sections 238.200 to 238.275, the circuit court shall:

(1) Order the county clerk to cause the questions to appear on the ballot on the next regularly scheduled general, primary or special election day, which date shall be the same in each county or portion of a county included within and voting upon the proposed district;

(2) If the election is to be a mail-in election, specify a date on which ballots for the election shall be mailed, which date shall be a Tuesday, and shall be not earlier than the eighth Tuesday from the issuance of the order, and shall not be on the same day as an election conducted under the provisions of chapter 115, RSMo; or

(3) If all the owners of property in the district joined in the petition for formation of the district, such owners may cast their ballot by unanimous **verified** petition approving any measure submitted to them as voters pursuant to this chapter. Each owner shall receive one vote per acre owned. Fractional votes shall be allowed. The **verified** petition shall be [submitted to] **filed with** the circuit court clerk [who shall verify the authenticity of all signatures thereon]. The filing of a unanimous petition shall constitute an election under sections 238.200 to 238.275 and the results of said election shall be entered pursuant to subsection 6 of this section.

2. Application for a ballot shall be conducted as follows:

(1) Only qualified voters shall be entitled to apply for a ballot;

(2) Such persons shall apply with the clerk of the circuit court in which the petition was filed;

(3) Each person applying shall provide:

(a) Such person's name, address, mailing address, and phone number;

(b) An authorized signature; and

(c) Evidence that such person is entitled to vote. Such evidence shall be:

a. For resident individuals, proof of registration from the election authority;

b. For owners of real property, a tax receipt or deed or other document which evidences ownership, and identifies the real property by location;

(4) No person shall apply later than the fourth Tuesday before the date for mailing ballots specified in the circuit court's order.

3. If the election is to be a mail-in election, the circuit court shall mail a ballot to each qualified voter who applied for a ballot pursuant to subsection 2 of this section along with a return addressed envelope directed to the circuit court clerk's office with a sworn affidavit on the reverse side of such envelope for the voter's signature. Such affidavit shall be in the following form:

I hereby declare under penalties of perjury that I am qualified to vote, or to affix my authorized signature in the name of an entity which is entitled to vote, in this election.

Subscribed and sworn to before me this day of....., 20.....

.....

Authorized Signature

.....
Printed Name of Voter

.....
Signature of notary or other
officer authorized to
administer oaths.

.....
Mailing Address of Voter
(if different)

4. Except as otherwise provided in subsection 2 of section 238.220, with respect to the election of directors, each qualified voter shall have one vote. Each voter which is not an individual shall determine how to cast its vote as provided for in its articles of incorporation, articles of organization, articles of partnership, bylaws, or other document which sets forth an appropriate mechanism for the determination of the entity's vote. If a voter has no such mechanism, then its vote shall be cast as determined by a majority of the persons who run the day-to-day affairs of the voter. Each voted ballot shall be signed with the authorized signature.

5. Mail-in voted ballots shall be returned to the circuit court clerk's office by mail or hand delivery no later than 5:00 p.m. on the sixth Tuesday after the date for

mailing the ballots as set forth in the circuit court's order. The circuit court's clerk shall transmit all voted ballots to a team of judges of not less than four, with an equal number from each of the two major political parties. The judges shall be selected by the circuit court from lists compiled by the election authority. Upon receipt of the voted ballots, the judges shall verify the authenticity of the ballots, canvass the votes, and certify the results. Certification by the election judges shall be final and shall be immediately transmitted to the circuit court. Any qualified voter who voted in such election may contest the result in the same manner as provided in chapter 115, RSMo.

6. The results of the election shall be entered upon the records of the circuit court of the county in which the petition was filed. Also, a certified copy thereof shall be filed with the county clerk of each county in which a portion of the proposed district lies, who shall cause the same to be spread upon the records of the county commission.

452.340. 1. In a proceeding for dissolution of marriage, legal separation or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the support of the child, including an award retroactive to the date of filing the petition, without regard to marital misconduct, after considering all relevant factors including:

- (1) The financial needs and resources of the child;
- (2) The financial resources and needs of the parents;
- (3) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (4) The physical and emotional condition of the child, and the child's educational needs;
- (5) The child's physical and legal custody arrangements, including the amount of time the child spends with each parent and the reasonable expenses associated with the custody or visitation arrangements; and
- (6) The reasonable work-related child care expenses of each parent.

2. The obligation of the parent ordered to make support payments shall abate, in whole or in part, for such periods of time in excess of thirty consecutive days that the other parent has voluntarily relinquished physical custody of a child to the parent ordered to pay child support, notwithstanding any periods of visitation or temporary physical and legal or physical or legal custody pursuant to a judgment of dissolution or legal separation or any modification thereof. In a IV-D case, the division of child support enforcement may determine the amount of the abatement pursuant to this subsection for any child support order and shall record the amount of abatement in the automated child support system record established pursuant to chapter 454, RSMo. If the case is not a IV-D case and upon court order, the circuit clerk shall record the amount of abatement in the automated child support system record established in chapter 454, RSMo.

3. Unless the circumstances of the child manifestly dictate otherwise and the

court specifically so provides, the obligation of a parent to make child support payments shall terminate when the child:

- (1) Dies;
- (2) Marries;
- (3) Enters active duty in the military;
- (4) Becomes self-supporting, provided that the custodial parent has relinquished the child from parental control by express or implied consent;
- (5) Reaches age eighteen, unless the provisions of subsection 4 or 5 of this section apply; or
- (6) Reaches age twenty-two, unless the provisions of the child support order specifically extend the parental support order past the child's twenty-second birthday for reasons provided by subsection 4 of this section.

4. If the child is physically or mentally incapacitated from supporting himself and insolvent and unmarried, the court may extend the parental support obligation past the child's eighteenth birthday.

5. If when a child reaches age eighteen, the child is enrolled in and attending a secondary school program of instruction, the parental support obligation shall continue, if the child continues to attend and progresses toward completion of said program, until the child completes such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an institution of vocational or higher education not later than October first following graduation from a secondary school or completion of a graduation equivalence degree program and so long as the child enrolls for and completes at least twelve hours of credit each semester, not including the summer semester, at an institution of vocational or higher education and achieves grades sufficient to reenroll at such institution, the parental support obligation shall continue until the child completes his or her education, or until the child reaches the age of twenty-two, whichever first occurs. To remain eligible for such continued parental support, at the beginning of each semester the child shall submit to each parent a transcript or similar official document provided by the institution of vocational or higher education which includes the courses the child is enrolled in and has completed for each term, the grades and credits received for each such course, and an official document from the institution listing the courses which the child is enrolled in for the upcoming term and the number of credits for each such course. If the circumstances of the child manifestly dictate, the court may waive the October first deadline for enrollment required by this subsection. **If the child has pursued a path of continuous attendance and has demonstrated evidence of a plan to continue to do so, the court may enter a judgment abating support for a period of up to five months for any semester in which the child completes at least six but less than twelve credit hours.** If the child is enrolled in such an institution, the child or parent obligated to pay support may

petition the court to amend the order to direct the obligated parent to make the payments directly to the child. As used in this section, an "institution of vocational education" means any postsecondary training or schooling for which the student is assessed a fee and attends classes regularly. "Higher education" means any junior college, community college, college, or university at which the child attends classes regularly. A child who has been diagnosed with a learning disability, or whose physical disability or diagnosed health problem limits the child's ability to carry the number of credit hours prescribed in this subsection, shall remain eligible for child support so long as such child is enrolled in and attending an institution of vocational or higher education, and the child continues to meet the other requirements of this subsection. A child who is employed at least fifteen hours per week during the semester may take as few as nine credit hours per semester and remain eligible for child support so long as all other requirements of this subsection are complied with.

6. The court shall consider ordering a parent to waive the right to claim the tax dependency exemption for a child enrolled in an institution of vocational or higher education in favor of the other parent if the application of state and federal tax laws and eligibility for financial aid will make an award of the exemption to the other parent appropriate.

7. The general assembly finds and declares that it is the public policy of this state that frequent, continuing and meaningful contact with both parents after the parents have separated or dissolved their marriage is in the best interest of the child except for cases where the court specifically finds that such contact is not in the best interest of the child. In order to effectuate this public policy, a court with jurisdiction shall enforce visitation, custody and child support orders in the same manner. A court with jurisdiction may abate, in whole or in part, any past or future obligation of support and may transfer the physical and legal or physical or legal custody of one or more children if it finds that a parent has, without good cause, failed to provide visitation or physical and legal or physical or legal custody to the other parent pursuant to the terms of a judgment of dissolution, legal separation or modifications thereof. The court shall also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court costs incurred by the prevailing party.

8. The Missouri supreme court shall have in effect a rule establishing guidelines by which any award of child support shall be made in any judicial or administrative proceeding. Said guidelines shall contain specific, descriptive and numeric criteria which will result in a computation of the support obligation. The guidelines shall address how the amount of child support shall be calculated when an award of joint physical custody results in the child or children spending substantially equal time with both parents. Not later than October 1, 1998, the Missouri supreme court shall publish child support guidelines and specifically list and explain the relevant factors and

assumptions that were used to calculate the child support guidelines. Any rule made pursuant to this subsection shall be reviewed by the promulgating body not less than once every [three] **four** years to ensure that its application results in the determination of appropriate child support award amounts.

9. There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established pursuant to subsection 8 of this section is the correct amount of child support to be awarded. A written finding or specific finding on the record in a judicial or administrative proceeding that the application of the guidelines would be unjust or inappropriate in a particular case, after considering all relevant factors, including the factors set out in subsection 1 of this section, is required if requested by a party and shall be sufficient to rebut the presumption in the case. The written finding or specific finding on the record shall detail the specific relevant factors that required a deviation from the application of the guidelines.

10. Pursuant to this or any other chapter, when a court determines the amount owed by a parent for support provided to a child by another person, other than a parent, prior to the date of filing of a petition requesting support, or when the director of the division of child support enforcement establishes the amount of state debt due pursuant to subdivision (2) of subsection 1 of section 454.465, RSMo, the court or director shall use the guidelines established pursuant to subsection 8 of this section. The amount of child support resulting from the application of the guidelines shall be applied retroactively for a period prior to the establishment of a support order and the length of the period of retroactivity shall be left to the discretion of the court or director. There shall be a rebuttable presumption that the amount resulting from application of the guidelines under subsection 8 of this section constitutes the amount owed by the parent for the period prior to the date of the filing of the petition for support or the period for which state debt is being established. In applying the guidelines to determine a retroactive support amount, when information as to average monthly income is available, the court or director may use the average monthly income of the noncustodial parent, as averaged over the period of retroactivity, in determining the amount of presumed child support owed for the period of retroactivity. The court or director may enter a different amount in a particular case upon finding, after consideration of all relevant factors, including the factors set out in subsection 1 of this section, that there is sufficient cause to rebut the presumed amount.

11. The obligation of a parent to make child support payments may be terminated as follows:

(1) Provided that the child support order contains the child's date of birth, the obligation shall be deemed terminated without further judicial or administrative process

when the child reaches age twenty-two if the child support order does not specifically require payment of child support beyond age twenty-two for reasons provided by subsection 4 of this section;

(2) The obligation shall be deemed terminated without further judicial or administrative process when the parent receiving child support furnishes a sworn statement or affidavit notifying the obligor parent of the child's emancipation in accordance with the requirements of subsection 4 of section 452.370, and a copy of such sworn statement or affidavit is filed with the court which entered the order establishing the child support obligation, or the division of child support enforcement;

(3) The obligation shall be deemed terminated without further judicial or administrative process, when the parent paying child support files a sworn statement or affidavit with the court which entered the order establishing the child support obligation, or the division of child support enforcement, stating that the child is emancipated and reciting the factual basis for such statement; which statement or affidavit is served by the court or division on the child support obligee; and which is either acknowledged and affirmed by the child support obligee in writing, or which is not responded to in writing within thirty days of receipt by the child support obligee;

(4) The obligation shall be terminated as provided by this subdivision by the court which entered the order establishing the child support obligation, or the division of child support enforcement, when the parent paying child support files a sworn statement or affidavit with the court which entered the order establishing the child support obligation, or the division of child support enforcement, stating that the child is emancipated and reciting the factual basis for such statement; and which statement or affidavit is served by the court or division on the child support obligee. If the obligee denies the statement or affidavit, the court or division shall thereupon treat the sworn statement or affidavit as a motion to modify the support obligation pursuant to section 452.370 or section 454.496, RSMo, and shall proceed to hear and adjudicate such motion as provided by law; provided that the court may require the payment of a deposit as security for court costs and any accrued court costs, as provided by law, in relation to such motion to modify.

12. The court may enter a judgment terminating child support pursuant to subdivisions (1) to (3) of subsection 11 of this section without necessity of a court appearance by either party. The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant to subsection 11 of this section on both the obligor and obligee parents. The supreme court may promulgate uniform forms for sworn statements and affidavits to terminate orders of child support obligations for use pursuant to subsection 11 of this section and subsection 4 of section 452.370.

455.516. 1. Not later than fifteen days after the filing of a petition under sections 455.500 to 455.538, a hearing shall be held unless the court deems, for good cause

shown, that a continuance should be granted. At the hearing, which may be an open or a closed hearing at the discretion of the court, whichever is in the best interest of the child, if the petitioner has proved the allegation of abuse of a child by a preponderance of the evidence, the court may issue a full order of protection for [a definite period of time, not to exceed] **at least** one hundred eighty days **and not more than one year**. The court may allow as evidence any in camera videotape made of the testimony of the child pursuant to section 491.699, RSMo. The provisions of section 491.075, RSMo, relating to admissibility of statements of a child under the age of twelve shall apply to any hearing under the provisions of sections 455.500 to 455.538. Upon motion by either party, the guardian ad litem or the court-appointed special advocate, and after a hearing by the court, the full order of protection may be renewed for a period [not to exceed] **of time the court deems appropriate, except that the protective order shall be valid for at least** one hundred eighty days **and not more than one year** from the expiration date of the originally issued full order of protection. If for good cause a hearing cannot be held on the motion to renew the full order of protection prior to the expiration date of the originally issued full order of protection, an ex parte order of protection may be issued until a hearing is held on the motion. Upon motion by either party, the guardian ad litem or the court appointed special advocate, and after a hearing by the court, the second full order of protection may be renewed for an additional period [not to exceed] **of time the court deems appropriate, except that the protective order shall be valid for at least** one hundred eighty days **and not more than one year** from the expiration date of the second full order of protection. If for good cause a hearing cannot be held on the motion to renew the second full order of protection prior to the expiration date of the second order, an ex parte order of protection may be issued until a hearing is held on the motion. [The total time period for the consecutive orders of protection based upon the original petition shall not exceed eighteen months.] For purposes of this subsection, a finding by the court of a subsequent act of abuse is not required for a renewal order of protection.

2. The court shall cause a copy of the petition and notice of the date set for the hearing on such petition and any ex parte order of protection to be personally served upon the respondent by personal process server as provided by law or by any sheriff or police officer at least three days prior to such hearing. Such shall be served at the earliest time, and service of such shall take priority over service in other actions, except those of a similar emergency nature. The court shall cause a copy of any full order of protection to be served upon or mailed by certified mail to the respondent at [his] **the respondent's** last known address. Failure to serve or mail a copy of the full order of protection to the respondent shall not affect the validity or enforceability of a full order of protection.

3. A copy of any order of protection granted under sections 455.500 to 455.538 shall be issued to the petitioner and to the local law enforcement agency in the

jurisdiction where the petitioner resides. The clerk shall also issue a copy of any order of protection to the local law enforcement agency responsible for maintaining the Missouri uniform law enforcement system (MULES) or any other comparable law enforcement system the same day the order is granted. The law enforcement agency responsible for maintaining MULES shall enter information contained in the order for purposes of verification within twenty-four hours from the time the order is granted. A notice of expiration or of termination of any order of protection shall be issued to such local law enforcement agency and to the law enforcement agency responsible for maintaining MULES or any other comparable law enforcement system. The law enforcement agency responsible for maintaining the applicable law enforcement system shall enter such information in the system. The information contained in an order of protection may be entered in the Missouri uniform law enforcement system or comparable law enforcement system using a direct automated data transfer from the court automated system to the law enforcement system.

4. A copy of the petition and notice of the date set for the hearing on such petition and any order of protection granted pursuant to sections 455.500 to 455.538 shall be issued to the juvenile office in the jurisdiction where the petitioner resides. A notice of expiration or of termination of any order of protection shall be issued to such juvenile office.

455.524. 1. The court shall retain jurisdiction over the full order of protection issued under sections 455.500 to 455.538 for its entire duration. The court may schedule compliance review hearings to monitor the respondent's compliance with the order.

2. The terms of the child order of protection issued under this chapter are enforceable by all remedies available at law for the enforcement of a judgment, and the court may punish a respondent who willfully violates the child order of protection to the same extent as provided by law for contempt of the court in any suit or proceeding cognizable by the court.

461.005. In sections 461.003 to 461.081, unless the context otherwise requires, the following terms mean:

(1) "Beneficiary", a person or persons designated or entitled to receive property pursuant to a nonprobate transfer on surviving one or more persons;

(2) "Beneficiary designation", a provision in writing that is not a will that designates the beneficiary of a nonprobate transfer, including the transferee in an instrument that makes the transfer effective on death of the owner, and that complies with the conditions of any governing instrument, the rules of any transferring entity and applicable law;

(3) "Death of the owner", in the case of joint owners, means death of the last surviving owner;

(4) "In proper form", a phrase which applies to a beneficiary designation or a revocation or change thereof, or a request to make, revoke or change a beneficiary designation, which complies with the terms of the governing instrument, the rules of the transferring entity and applicable law, including any requirements with respect to supplemental documents;

(5) "Joint owners", persons who hold property as joint tenants with right of survivorship and a husband and wife who hold property as tenants by the entirety;

(6) "LDPS", an abbreviation of lineal descendants per stirpes which may be used in a beneficiary designation to designate a substitute beneficiary as provided in section 461.045;

(7) "Nonprobate transfer", a transfer of property taking effect upon the death of the owner, pursuant to a beneficiary designation. A nonprobate transfer under sections 461.003 to 461.081 does not include survivorship rights in property held as joint tenants or tenants by the entirety, a transfer to a remainderman on termination of a life tenancy, a transfer under a trust established by an individual, either inter vivos or testamentary, a transfer pursuant to the exercise or nonexercise of a power of appointment, or a transfer made on death of a person who did not have the right to designate his or her estate as the beneficiary of the transfer;

(8) "Owner", a person or persons having a right, exercisable alone or with others, **regardless of the terminology used to refer to the owner in any written beneficiary designation**, to designate the beneficiary of a nonprobate transfer, and includes joint owners. **The provisions of this subdivision shall apply to all beneficiary deeds executed and filed at any time, including, but not limited to, those executed and filed on or before August 28, 2005;**

(9) "Ownership in beneficiary form", holding property pursuant to a registration in beneficiary form or other writing that names the owner of the property followed by a transfer on death direction and the designation of a beneficiary;

(10) "Person", living individuals, entities capable of owning property and fiduciaries;

(11) "Proof of death", includes a death certificate or record or report that is prima facie proof or evidence of death under section 472.290, RSMo;

(12) "Property", any present or future interest in property, real or personal, tangible or intangible, legal or equitable. Property includes a right to direct or receive payment of a debt, money or other benefits due under a contract, account agreement, deposit agreement, employment contract, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust or law, a right to receive performance remaining due under a contract, a right to receive payment under a promissory note or a debt maintained in a written account record, rights under a certificated or uncertificated security, rights under an instrument evidencing ownership of property issued by a

governmental agency and rights under a document of title within the meaning of section 400.1-201, RSMo;

(13) "Registration in beneficiary form", titling of an account record, certificate, or other written instrument evidencing ownership of property in the name of the owner followed by a transfer on death direction and the designation of a beneficiary;

(14) "Security", a certificated or uncertificated security as defined in section 400.8-102, RSMo, including securities as defined in section 409.401, RSMo;

(15) "Transfer on death direction", the phrase "transfer on death to" or the phrase "pay on death to" or the abbreviation "TOD" or "POD" after the name of the owners and before the designation of the beneficiary; and

(16) "Transferring entity", a person who owes a debt or is obligated to pay money or benefits, render contract performance, deliver or convey property, or change the record of ownership of property on the books, records and accounts of an enterprise or on a certificate or document of title that evidences property rights, and includes any governmental agency, business entity or transfer agent that issues certificates of ownership or title to property and a person acting as a custodial agent for an owner's property.

475.010. When used in this chapter, unless otherwise apparent from the context, the following terms mean:

(1) "Adult", a person who has reached the age of eighteen years;

(2) "Claims", liabilities of the protectee arising in contract, in tort or otherwise, before or after the appointment of a conservator, and liabilities of the estate which arise at or after the adjudication of disability or after the appointment of a conservator of the estate, including expenses of the adjudication and of administration. The term does not include demands or disputes regarding title of the protectee to specific assets alleged to be included in the estate;

(3) "Conservator", one appointed by a court to have the care and custody of the estate of a minor or a disabled person. A "limited conservator" is one whose duties or powers are limited. The term "conservator", as used in this chapter, includes "limited conservator" unless otherwise specified or apparent from the context;

(4) "Disabled" or "disabled person", one who is:

(a) Unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks ability to manage his **or her** financial resources, or

(b) The term "disabled" or "disabled person", as used in this chapter includes the terms "partially disabled" or "partially disabled person" unless otherwise specified or apparent from the context;

(5) "Eligible person" or "qualified person", a natural person, social service agency, corporation or national or state banking organization qualified to act as guardian

of the person or conservator of the estate pursuant to the provisions of section 475.055;

(6) "Guardian", one appointed by a court to have the care and custody of the person of a minor or of an incapacitated person. A "limited guardian" is one whose duties or powers are limited. **A "standby guardian" is one approved by the court to temporarily assume the duties of guardian of a minor child under section 475.046.** The term "guardian", as used in this chapter, includes "limited guardian" unless otherwise specified or apparent from the context;

(7) "Guardian ad litem", one appointed by a court, in which particular litigation is pending, to represent a minor, an incapacitated person, a disabled person, or an unborn person in that particular proceeding or as otherwise specified in this code;

(8) "Habilitation", instruction, training, guidance or treatment designed to enable and encourage a mentally retarded or developmentally disabled person as defined in chapter 630, RSMo, to acquire and maintain those life skills needed to cope more effectively with the demands of his **or her** own person and of his **or her** environment;

(9) "Incapacitated person", one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he **or she** lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur. The term "incapacitated person" as used in this chapter includes the term "partially incapacitated person" unless otherwise specified or apparent from the context;

(10) "Least restrictive environment", that there shall be imposed on the personal liberty of the ward only such restraint as is necessary to prevent [him] **the ward** from injuring himself **or herself** and others and to provide [him] **the ward** with such care, habilitation and treatment as are appropriate for [him] **the ward** considering his **or her** physical and mental condition and financial means;

(11) "Manage financial resources", either those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, income or any assets, or those actions necessary to prevent waste, loss or dissipation of property, or those actions necessary to provide for the care and support of such person or anyone legally dependent upon [him] **such person** by a person of ordinary skills and intelligence commensurate with his **or her** training and education;

(12) "Minor", any person who is under the age of eighteen years;

(13) **"Parent", one legally established as the parent of the minor;**

(14) "Parent with physical custody", the legally established parent with physical custody of the minor;

(15) "Partially disabled person", one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that [he] **such person** lacks capacity to manage, in part, his financial

resources;

[(14)] **(16)** "Partially incapacitated person", one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to the extent that [he] **such person** lacks capacity to meet, in part, essential requirements for food, clothing, shelter, safety, or other care without court-ordered assistance;

(17) "Presumed parent", a person defined in section 210.822, RSMo;

[(15)] **(18)** "Protectee", a person for whose estate a conservator or limited conservator has been appointed or with respect to whose estate a transaction has been authorized by the court under section 475.092 without appointment of a conservator or limited conservator;

(19) "Putative parent", a parent registered under the putative father registry under section 192.016, RSMo;

[(16)] **(20)** "Social service agency", a charitable organization organized and incorporated as a not-for-profit corporation under the laws of this state and which qualifies as an exempt organization within the meaning of section 501(c)(3), or any successor provision thereto of the federal Internal Revenue Code;

[(17)] **(21)** "Treatment", the prevention, amelioration or cure of a person's physical and mental illnesses or incapacities;

[(18)] **(22)** "Ward" is a minor or an incapacitated person for whom a guardian or limited guardian has been appointed.

475.045. 1. Except in cases where they fail or refuse to give required security or are adjudged unfit for the duties of guardianship or conservatorship, or waive their rights to be appointed, the following persons, if otherwise qualified, shall be appointed as guardians or conservators of minors:

(1) The parent or parents of the minor, except as provided in section 475.030;

(2) If any minor over the age of fourteen years has no qualified parent living, a person nominated by the minor, unless the court finds appointment contrary to the best interests of the minor;

(3) [Where both parents of a minor are dead, any person appointed by the will of the last surviving parent, who has not been adjudged unfit or incompetent for the duties of guardian or conservator] **Any person appointed by will or other signed writing by an appointing parent who has not been adjudged unfit or incompetent for the duties of guardian or conservator.**

2. Without surrendering parental rights, any parent, legal guardian, or other court approved party interested in the minor's welfare may appoint a standby guardian of a minor in accordance with section 475.046.

3. Unfitness of any of the persons mentioned in subsection 1 for the duties of guardianship or conservatorship may be adjudged by the court after due notice and

hearing.

[3.] 4. Unfitness of any of the persons listed in subsection 1 of this section for the duties of guardianship or conservatorship may be adjudged by the court after due notice and hearing.

5. If no appointment is made under subsection 1 of this section, the court shall appoint as guardian or conservator of a minor the most suitable person who is willing to serve an whose appointment serves the best interests of the child to a stable and permanent placement.

475.046. 1. Upon petition as provided in section 475.060 of an appointing parent, legal guardian, or other court approved party interested in the minor's welfare, the court may, before appointment becomes effective, confirm the parent's selection of a standby guardian and terminate the rights of other persons to object.

2. Reasonable notice of the petition shall be provided to the parent, presumed parent, or putative parent under section 475.070 and section 472.100, RSMo.

3. The appointment of a standby guardian becomes effective upon the disability or incapacitation of the appointing parent or legal guardian under the definitions in section 475.010 or upon the appointing parent's or legal guardian's death. The standby guardian has the responsibility to bring to the court evidence that the disability or incapacitation of the appointing parent or guardian has occurred.

4. The standby guardian becomes eligible to act upon the filing of an acceptance of appointment, which shall be filed within thirty days after the standby guardian's confirmation by the court becomes effective. The standby guardian shall:

(1) File the acceptance of appointment and a copy of the will with the court of the county in which the will was or could be probated, or in the case of another appointment instrument, file the acceptance of appointment and the appointing instrument with the court of the county in which the minor resides or is present; and

(2) Give written notice of the acceptance of appointment as provided in section 475.070.

5. The standby guardian shall have the same general powers and duties as provided for a guardian in section 475.120; except that, within sixty days after the death of the appointing parent or guardian, the court shall conduct a hearing to review the placement with the standby guardian and may, if requested by the standby guardian, make the guardianship permanent. The court shall continue the placement with the standby guardian unless it finds that such placement is contrary to the best interest of the child.

6. The court may, at the hearing required in subsection 5 of this section or at any other time, require a home study of the standby guardian.

7. The appointment of a standby guardian by a parent shall not supersede parental rights of either parent while alive, unless the parental rights have otherwise been terminated.

8. Until the court confirms an appointee under this section, a minor who is the subject of an appointment by a parent and who has attained fourteen years of age, the other parent, or a person other than a parent or guardian having care and custody of the minor may attempt to prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed. An objection may be withdrawn and, if withdrawn, is of no effect. The court shall have discretion and the objection shall not preclude judicial appointment of the person selected by the parent.

472.060. No judge of probate shall sit in a case in which [he] **the judge** is interested, or in which [he] **the judge** is biased or prejudiced against any interested party, or in which [he] **the judge** has been counsel or a material witness, or when [he] **the judge** is related to either party, or in the determination of any cause or proceeding in the administration and settlement of any estate of which [he] **the judge** has been personal representative, conservator, or guardian, when any party in interest objects in writing, verified by affidavit; and when the objections are made, the cause shall be transferred to another judge, in accordance with the [rules of civil procedure relating to change of judge] **provisions of section 478.255, RSMo**, who shall hear and determine same; and the clerk of the circuit court or division clerk shall deliver to the probate division of the circuit court a full and complete transcript of the judgment, order or decree made in the cause, which shall be kept with the papers in the office pertaining to such cause.

478.255. 1. When the presiding judge assigns an associate circuit judge to sit as a circuit judge in a particular case and, thereafter, the associate circuit judge is disqualified from hearing the case, the case shall be returned to the presiding judge for reassignment to another judge of the circuit court including the presiding judge himself should that be necessary in the discretion of the presiding judge.

2. When a presiding judge elects to hear and determine a case but subsequently is disqualified, [he] **such judge** is disqualified for all purposes and the chief justice of the supreme court shall assign a competent judge to hear and determine the case, except as provided in subsection 3 of this section.

3. In any circuit, which has four circuit judges or less, when a presiding judge elects to hear and determine a case but subsequently is disqualified, such presiding judge may assign another judge within the circuit, qualified to hear the case, to hear and determine the case. If there is no other judge within the circuit qualified to hear the case, the chief justice of the supreme court shall assign a competent judge to hear and

determine the case.

4. The provisions of this section shall apply to disqualification of any judge in the probate division of a circuit court.

478.550. 1. There shall be four circuit judges in the twenty-third judicial circuit consisting of the county of Jefferson. These judges shall sit in divisions numbered one, two, three and four. **Beginning on January 1, 2007, there shall be six circuit judges in the twenty-third judicial district and these judges shall sit in divisions numbered one, two, three, four, five, and six. The division eleven associate circuit judge position and the division twelve associate circuit judge shall become circuit judge positions beginning January 1, 2007. The division eleven associate circuit judge shall be numbered as division five and the division twelve associate circuit judge shall be numbered as division six.**

2. The circuit judge in division three shall be elected in 1980. The circuit judges in divisions one and four shall be elected in 1982. The circuit judge in division two shall be elected in 1984. **The circuit judges in division five and six shall be elected for a six-year term in 2006.**

3. Beginning January 1, 2007, the family court commissioner position in the twenty-third judicial district appointed under section 487.020, RSMo, shall become an associate circuit judge position in all respects and shall be designated as division eleven. This position may retain the duties and responsibilities with regard to the family court. The associate circuit judge in division eleven shall be elected in 2006 for a full four-year term. This associate circuit judgeship shall not be included in the statutory formula for authorizing additional associate circuit judgeships per county under section 478.320.

4. Beginning January 1, 2007, the drug court commissioner position in the twenty-third judicial district appointed under section 487.003, RSMo, shall become an associate circuit judge position in all respects and shall be designated as division twelve. This position may retain the duties and responsibilities with regard to the drug court. The associate circuit judge in division twelve shall be elected in 2006 for a full four-year term. This associate circuit judgeship shall not be included in the statutory formula for authorizing additional associate circuit judgeships per county under section 478.320.

478.570. 1. There shall be two circuit judges in the seventeenth judicial circuit consisting of the counties of Cass and Johnson. These judges shall sit in divisions numbered one and two.

2. The circuit judge in division two shall be elected in 1980. The circuit judge in division one shall be elected in 1982.

3. Beginning on January 1, 2007, there shall be one additional associate circuit judge position in Cass County than is provided under section 478.320.

478.600. 1. There shall be four circuit judges in the eleventh judicial circuit consisting of the county of St. Charles. These judges shall sit in divisions numbered one, two, three and four. **Beginning on January 1, 2007, there shall be six circuit judges in the eleventh judicial circuit and these judges shall sit in divisions numbered one, two, three, four, five, and seven. The division five associate circuit judge position and the division seven associate circuit judge position shall become circuit judge positions beginning January 1, 2007, and shall be numbered as divisions five and seven.**

2. The circuit judge in division two shall be elected in 1980. The circuit judge in division four shall be elected in 1982. The circuit judge in division one shall be elected in 1984. The circuit judge in division three shall be elected in 1992. **The circuit judges in divisions five and seven shall be elected for a six-year term in 2006.**

3. **Beginning January 1, 2007, the family court commissioner positions in the eleventh judicial circuit appointed under section 487.020, RSMo, shall become associate circuit judge positions in all respects and shall be designated as divisions nine and ten respectively. These positions may retain the duties and responsibilities with regard to the family court. The associate circuit judges in divisions nine and ten shall be elected in 2006 for full four-year terms.**

4. **Beginning on January 1, 2007, the drug court commissioner position in the eleventh judicial circuit appointed under section 478.003 shall become an associate circuit judge position in all respects and shall be designated as division eleven. This position retains the duties and responsibilities with regard to the drug court. Such associate circuit judge shall be elected in 2006 for a full four-year term. This associate circuit judgeship shall not be included in the statutory formula for authorizing additional associate circuit judgeships per county under section 478.320.**

483.537. The clerk of any state court who, by deputy or otherwise, takes or processes applications for passports or their renewal shall account for the fees charged for such service[, and remit eighty percent of the same on the last day of each month to the state, and twenty percent to the county where the application was taken] **and for the expenditure of such fee in an annual report made to the presiding judge and the office of the state courts administrator. Such fees shall be only for the maintenance of the courthouse or to fund operations of the circuit court.**

486.200. As used in sections 486.200 to 486.405

(1) "County" means any of the several counties of this state or the city of St. Louis;

(2) "County clerk" means any of the several county clerks of this state or the clerk of the circuit court in the city of St. Louis;

(3) "Facsimile" means an exact copy preserving all the written or printed marks

of the original;

(4) "Notarization" means the performance of a notarial act;

(5) "Notary public" and "notary" means any person appointed and commissioned to perform notarial acts, **including any attorney licensed to practice law in this state;**

(6) "Official misconduct" means the wrongful exercise of a power or the wrongful performance of a duty. The term "wrongful" as used in the definition of official misconduct means unauthorized, unlawful, abusive, negligent, reckless, or injurious.

488.014. No court of record in this state, municipal division of the circuit court, or any entity collecting court costs on their behalf shall be required to refund any overpayment of court costs in an amount not exceeding five dollars or to collect any due court costs in an amount of less than five dollars. Any such overpaid funds may be retained by the courts for the operation of the circuit court.

488.031. 1. In addition to other fees authorized by law, the clerk of each court shall collect the following fees on the filing of any civil or criminal action or proceeding, including an appeal, except that no fee shall be imposed pursuant to this section on any case that is filed charging traffic violations except alcohol-related offenses:

Supreme court and [courts] court of appeals	\$20
	.00;
Circuit [courts] division	\$10
	.00;
Associate circuit courts	\$ 8.
	00;
	and
Small claims courts	No additional fee

2. Court filing surcharges pursuant to this section shall be collected in the same manner as other fees, fines, or costs in the case. The amounts so collected shall be paid by the clerk to the office of the state courts administrator and credited to the special fund designated as the basic civil legal services fund. However, the additional fees prescribed by this section shall not be collected when a criminal proceeding or defendant has been dismissed by the court or when costs are waived or are to be paid by the state, county, municipality, or other political subdivision of this state.

488.445. 1. The governing body of any county, or of any city not within a county, by order or ordinance [to be effective prior to January 1, 2001,] may impose a fee upon the issuance of a marriage license and may impose a surcharge upon any civil case filed in the circuit court. The surcharge shall not be charged when costs are waived or are to be paid by the state, county or municipality.

2. The fee imposed upon the issuance of a marriage license shall be five dollars, shall be paid by the person applying for the license and shall be collected by the recorder

of deeds at the time the license is issued. The surcharge imposed upon the filing of a civil action shall be two dollars, shall be paid by the party who filed the petition and shall be collected and disbursed by the clerk of the court in the manner provided by sections 488.010 to 488.020. Such amounts shall be payable to the treasuries of the counties from which such surcharges were paid.

3. At the end of each month, the recorder of deeds shall file a verified report with the county commission of the fees collected pursuant to the provisions of subsection 2 of this section. The report may be consolidated with the monthly report of other fees collected by such officers. Upon the filing of the reports the recorder of deeds shall forthwith pay over to the county treasurer all fees collected pursuant to subsection 2 of this section. The county treasurer shall deposit all such fees upon receipt in a special fund to be expended only to provide financial assistance to shelters for victims of domestic violence as provided in sections 455.200 to 455.230, RSMo.

488.607. [In addition to all other court costs for county or municipal ordinance violations,] **The governing body of** any county or any city having a shelter for victims of domestic violence established pursuant to sections 455.200 to 455.230, RSMo, or any municipality within a county which has such shelter, or any county or municipality whose residents are victims of domestic violence and are admitted to such shelters **in another county**, may, by order or ordinance provide for an additional surcharge in the amount of two dollars per case for each criminal case [and each county or municipal ordinance violation case filed before a municipal division judge or associate circuit judge], **including violations of any county or municipal ordinance**. No surcharge shall be collected in any proceeding when the proceeding or defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality. Such surcharges collected by municipal clerks in municipalities electing or required to have violations of municipal ordinances tried before a municipal judge pursuant to section 479.020, RSMo, or to employ judicial personnel pursuant to section 479.060, RSMo, shall be disbursed to the city at least monthly, and such surcharges collected by circuit court clerks shall be collected and disbursed as provided by sections 488.010 to 488.020. Such fees shall be payable to the city or county wherein such fees originated. The county or city shall use such moneys only for the purpose of providing operating expenses for shelters for battered persons as defined in sections 455.200 to 455.230, RSMo.

488.5019. There shall be assessed and collected a surcharge of one dollar in all criminal cases filed in the courts of this state, including violations of any county ordinance or any violation of criminal or traffic laws of this state, including infractions, but no such surcharge shall be assessed when the costs are waived or are to be paid by the state, county, or municipality or when a criminal proceeding or the defendant has been dismissed by the court or against any person who has

pled guilty and paid their fine under subsection 4 of section 476.385, RSMo. For purposes of this section, the term "county ordinance" shall include any ordinance of the city of St. Louis. The clerk responsible for collecting court costs in criminal cases shall collect and disburse such amounts as provided by sections 488.010 to 488.020. Such surcharges collected shall be payable to the credit of the legal defense and defender fund established in section 600.090, RSMo.

488.5030. To collect on past-due court-ordered penalties, fines, restitution, sanctions, court costs, including restitution and juvenile monetary assessments, or judgments to the state of Missouri or one of its political subdivisions, any division of the circuit court may contract with public agencies or **with private entities operating under a contract with a state agency or the office of state courts administrator**. Any fees or costs associated with such collection efforts shall be added to the amount due, but such fees and costs shall not exceed twenty percent of the amount collected.

494.430. 1. Upon timely application to the court, the following persons shall be excused from service as a petit or grand juror:

(1) Any person who has served on a state or federal petit or grand jury within the preceding two years;

(2) Any person whose absence from his or her regular place of employment would, in the judgment of the court, tend materially and adversely to affect the public safety, health, welfare or interest;

(3) Any person upon whom service as a juror would in the judgment of the court impose an undue or extreme physical or financial hardship;

(4) Any person licensed [to engage in and actively engaged in the practice of medicine, osteopathy, chiropractic, dentistry or pharmacy] **as a healthcare provider as such term is defined in section 538.205, RSMo**, but only if such person provides a written statement to the court certifying that he or she is actually providing health care services to patients, and that the person's service as a juror would be detrimental to the health of the person's patients;

(5) Any employee of a religious institution whose religious obligations or constraints prohibit their serving on a jury. The certification of the employment and obligation or constraint may be provided by the employee's religious supervisor.

2. A judge of the court for which the individual was called to jury service shall make undue or extreme physical or financial hardship determinations. The authority to make these determinations is delegable only to court officials or personnel who are authorized by the laws of this state to function as members of the judiciary.

3. A person asking to be excused based on a finding of undue or extreme physical or financial hardship must take all actions necessary to have obtained a ruling on that request by no later than the date on which the individual is scheduled to appear

for jury duty.

4. **Unless it is apparent to the court that the physical hardship would significantly impair the person's ability to serve as a juror**, for purposes of sections 494.400 to 494.460 undue or extreme physical or financial hardship is limited to circumstances in which an individual would:

(1) Be required to abandon a person under his or her personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury; or

(2) Incur costs that would have a substantial adverse impact on the payment of the individual's necessary daily living expenses or on those for whom he or she provides the principal means of support; or

(3) Suffer physical hardship that would result in illness or disease.

5. Undue or extreme physical or financial hardship does not exist solely based on the fact that a prospective juror will be required to be absent from his or her place of employment.

6. A person asking a judge to grant an excuse based on undue or extreme physical or financial hardship shall [be required to] provide the judge with documentation **as required by the judge**, such as, but not limited to, federal and state income tax returns, medical statements from licensed physicians, proof of dependency or guardianship, and similar documents, which the judge finds to clearly support the request to be excused. Failure to provide satisfactory documentation shall result in a denial of the request to be excused. Such documents shall be filed under seal.

7. After two years, a person excused from jury service shall become eligible once again for qualification as a juror unless the person was excused from service permanently. A person is excused from jury service permanently only when the deciding judge determines that the underlying grounds for being excused are of a permanent nature.

494.432. 1. Individuals scheduled to appear for jury service have the right to postpone the date of their initial appearance for jury service one time only for reasons other than undue influence or extreme physical or financial hardship. When requested, postponements shall be granted, provided that:

(1) The prospective juror has not previously been granted a postponement;

(2) The prospective juror appears in person or contacts the board of jury commissioners by telephone, electronic mail, or in writing to request a postponement; and

(3) Prior to the grant of a postponement [with the concurrence of the board of jury commissioners, the prospective juror fixes a date certain] **the court shall set the date** on which [he or she] **the prospective juror** will appear for jury service that is not more than six months after the date on which the prospective juror originally was called

to serve and on which date the court will be in session. **If** a prospective juror [who] is a full-time student of any accredited institution [may fix a date certain], **the court shall set the date** on which [he or she] **the prospective juror** will appear for jury service that is not more than twelve months after the date on which the prospective juror originally was called to serve and on which the court will be in session.

2. A subsequent request to postpone jury service may be approved by a judicial officer only in the event of an extreme emergency, such as a death in the family, sudden grave illness, or a natural disaster or national emergency in which the prospective juror is personally involved, that could not have been anticipated at the time the initial postponement was granted. Prior to the grant of a second postponement, the prospective juror must fix a date certain on which the individual will appear for jury service within six months of the postponement on a date when the court will be in session.

516.130. Within three years:

(1) An action against a sheriff, coroner or other officer, upon a liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution or otherwise;

(2) An action upon a statute for a penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the state;

(3) An action under section 290.300, RSMo.

534.090. 1. Such summons shall be served as in other civil cases at least four days before the court date specified in such summons.

2. If the summons in such action cannot be served in the ordinary manner as provided by law, it shall be the duty of the judge before whom the proceeding is commenced, at the request of the plaintiff, to make an order directing that notices shall be set up for ten days on the premises in question and in one public place in the county where the defendant was believed to dwell, informing the defendant of the commencement of the proceedings against the defendant and to make an order directing that a copy of the summons be delivered to the defendant at the defendant's last known address by [certified mail, return receipt requested, delivered to addressee only] **ordinary mail**. [On proof of the notice and of the mailing of the notice by certified mail by affidavit of some competent witness] **If the officer, or other person empowered to execute the summons, shall return that the defendant is not found, or that the defendant has absconded or vacated his or her usual place of abode in this state, and if proof be made by affidavit of the posting and of the mailing of a copy of the summons and complaint,** the judge shall proceed to hear the case as if there had been personal service, and judgment shall be rendered and proceedings had as in other cases, except that where the defendant is in default no money judgment shall be granted the plaintiff under the order of publication and [certified] **ordinary** mail procedure set forth

in this section. If such summons is returned executed, then the judge shall set the case on the next available court date.

536.100. Any person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review thereof, as provided in sections 536.100 to 536.140, **unless such person files a petition for a trial de novo under the provisions of sections 536.142 to 536.148 or** unless some other provision for judicial review is provided by statute; provided, however, that nothing in this chapter contained shall prevent any person from attacking any void order of an agency at any time or in any manner that would be proper in the absence of this section. Unreasonable delay on the part of any agency in deciding any contested case shall be grounds for an order of the court either compelling action by the agency or removing the case to the court for decision.

536.142. 1. Any person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case regarding the employment of any employee of the state or any of its political subdivisions, whether such decision is affirmative or negative in form, may choose as an alternative to seeking judicial review of the decision under sections 536.100 to 536.140 to petition the circuit court for a trial de novo.

2. The right of trial de novo provided in subsection 1 of this section shall be perfected by filing an application for trial de novo with the circuit clerk in the county of proper venue within thirty days after the mailing or delivery of the notice of the agency's final decision. No summons shall issue in such case, but copies of the application shall be delivered to the agency and to each party of record in the proceedings before the agency or to his or her attorney of record, or shall be mailed to the agency and to such party or his or her said attorney by registered mail, and proof of such delivery or mailing shall be filed in the case.

3. Such application may be filed without first seeking a rehearing, but in cases where agencies have authority to entertain motions for rehearing and such a motion is duly filed, the thirty-day period aforesaid shall run from the date of the delivery or mailing of notice of the agency's decision on such motion.

4. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence.

5. Within thirty days after the filing of the application for trial de novo or within such further time as the court may allow, the plaintiff's petition or complaint, that was before the agency for decision and from which decision the plaintiff is seeking a trial de novo, along with any responsive pleadings to the plaintiff's petition or complaint, shall be filed by the agency with the circuit court

where the application for trial de novo was filed.

6. The court may on its own motion or upon motion of any party to the cause stay or require the agency to stay the enforcement of its order or temporarily to grant or extend or require the agency temporarily to grant or extend relief denied or withheld, pending final judgment. Such stay or other temporary relief by the court may be conditioned upon such terms as shall appear to the court to be proper. No such stay or temporary relief shall be granted by the court without notice, except in cases of threatened irreparable injury; and when in any case a stay or other temporary relief is granted without notice the court shall then make an order, of which due notice shall be given, setting the matter down for hearing as promptly as possible on the question whether such stay or other temporary relief shall be continued in effect. No such stay or other temporary relief shall be granted or continued unless the court is satisfied that the public interest will not be prejudiced thereby.

7. The trial de novo shall be governed by the practice for noninjury trials before circuit judges.

8. The findings of fact and conclusions of law reached by the administrative hearing body from whose decision the plaintiff made application for a trial de novo shall not be considered as evidence for proof of any matter asserted in the findings of fact and conclusions of law unless all parties to the cause agree otherwise.

9. Appeals may be taken from the judgment of the court as in other civil cases.

545.550. 1. If the defendant be in actual custody or confinement, the court or officer granting the order of removal shall, **subject to any arrangements made pursuant to subsection 2 of this section**, also make an order commanding the sheriff to remove the body of the defendant to the jail of the county into which the cause is to be removed, and then deliver him to the keeper of such jail, together with the warrant or process, by virtue of which he is imprisoned or held.

2. The sheriff of the county granting the change of venue and the sheriff of the county into which the cause is removed, may agree as to which county's jail will house the defendant. If the sheriffs do not agree where the defendant will be confined, the defendant will be confined in the county into which the cause is removed. In the event that the county granting the change of venue continues to house the defendant, the sheriff of that county shall be responsible for the timely transportation of the defendant for all court appearances that require the presence of the defendant.

557.036. 1. **Subject to the limitation provided in subsection 3 of this section**, upon a finding of guilt upon verdict or plea, the court shall decide the extent or duration of sentence or other disposition to be imposed under all the circumstances, having regard

to the nature and circumstances of the offense and the history and character of the defendant and render judgment accordingly.

2. [Where an offense is submitted to the jury, the trial shall proceed in two stages. At the first stage, the jury shall decide only whether the defendant is guilty or not guilty of any submitted offense. The issue of punishment shall not be submitted to the jury at the first stage.

3. If the jury at the first stage of a trial finds the defendant guilty of the submitted offense, the second stage of the trial shall proceed. The issue at the second stage of the trial shall be the punishment to be assessed and declared. Evidence supporting or mitigating punishment may be presented. Such evidence may include, within the discretion of the court, evidence concerning the impact of the crime upon the victim, the victim's family and others, the nature and circumstances of the offense, and the history and character of the defendant. Rebuttal and surrebuttal evidence may be presented. The state shall be the first to proceed. The court shall instruct the jury as to the range of punishment authorized by statute for each submitted offense. The attorneys may argue the issue of punishment to the jury, and the state shall have the right to open and close the argument. The jury shall assess and declare the punishment as authorized by statute.

4. A second stage of the trial shall not proceed and the court, and not the jury, shall assess punishment if:] **The court shall instruct the jury as to the range of punishment authorized by statute and upon a finding of guilt to assess and declare the punishment as a part of their verdict, unless:**

(1) The defendant requests in writing, prior to voir dire, that the court assess the punishment in case of a finding of guilt; or

(2) The state pleads and proves the defendant is a prior offender, persistent offender, dangerous offender, or persistent misdemeanor offender as defined in section 558.016, RSMo, a persistent sexual offender as defined in section 558.018, RSMo, or a predatory sexual offender as defined in section 558.018, RSMo.

If the jury **finds the defendant guilty but** cannot agree on the punishment to be assessed, the court shall proceed as provided in subsection 1 of this section. **If there is a trial by jury and the jury is to assess punishment and if**, after due deliberation by the jury, the court finds the jury cannot agree on punishment, then the court may instruct the jury that if it cannot agree on punishment that **it may return its verdict without assessing punishment and** the court will assess punishment.

[5.] **3.** If the jury returns a verdict of guilty [in the first stage] and declares a term of imprisonment [in the second stage] **as provided in subsection 2 of this section**, the court shall proceed as provided in subsection 1 of this section except that any term of imprisonment imposed cannot exceed the term declared by the jury unless the term

declared by the jury is less than the authorized lowest term for the offense, in which event the court cannot impose a term of imprisonment greater than the lowest term provided for the offense.

[6.] 4. If the defendant is found to be a prior offender, persistent offender, dangerous offender or persistent misdemeanor offender as defined in section 558.016, RSMo:

(1) If he has been found guilty of an offense, the court shall proceed as provided in section 558.016, RSMo; or

(2) If he has been found guilty of a class A felony, the court may impose any sentence authorized for the class A felony.

[7.] 5. The court shall not seek an advisory verdict from the jury in cases of prior offenders, persistent offenders, dangerous offenders, persistent sexual offenders or predatory sexual offenders; if an advisory verdict is rendered, the court shall not deem it advisory, but shall consider it as mere surplusage.

590.080. 1. The director shall have cause to discipline any peace officer licensee who:

(1) Is unable to perform the functions of a peace officer with reasonable competency or reasonable safety as a result of a mental condition, including alcohol or substance abuse;

(2) Has committed any criminal offense, whether or not a criminal charge has been filed;

(3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person;

(4) Has caused a material fact to be misrepresented for the purpose of obtaining or retaining a peace officer commission or any license issued pursuant to this chapter;

(5) Has violated a condition of any order of probation lawfully issued by the director; [or]

(6) Has violated a provision of this chapter or a rule promulgated pursuant to this chapter; or

(7) Engages in gross misconduct while not on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person.

2. When the director has knowledge of cause to discipline a peace officer licensee pursuant to this section, the director may cause a complaint to be filed with the administrative hearing commission, which shall conduct a hearing to determine whether the director has cause for discipline, and which shall issue findings of fact and conclusions of law on the matter. The administrative hearing commission shall not consider the relative severity of the cause for discipline or any rehabilitation of the

licensee or otherwise impinge upon the discretion of the director to determine appropriate discipline when cause exists pursuant to this section.

3. Upon a finding by the administrative hearing commission that cause to discipline exists, the director shall, within thirty days, hold a hearing to determine the form of discipline to be imposed and thereafter shall probate, suspend, or permanently revoke the license at issue. If the licensee fails to appear at the director's hearing, this shall constitute a waiver of the right to such hearing.

4. Notice of any hearing pursuant to this chapter or section may be made by certified mail to the licensee's address of record pursuant to subdivision (2) of subsection 3 of section 590.130. Proof of refusal of the licensee to accept delivery or the inability of postal authorities to deliver such certified mail shall be evidence that required notice has been given. Notice may be given by publication.

5. Nothing contained in this section shall prevent a licensee from informally disposing of a cause for discipline with the consent of the director by voluntarily surrendering a license or by voluntarily submitting to discipline.

6. The provisions of chapter 621, RSMo, and any amendments thereto, except those provisions or amendments that are in conflict with this chapter, shall apply to and govern the proceedings of the administrative hearing commission and pursuant to this section the rights and duties of the parties involved.

590.120. 1. There is hereby established within the department of public safety a "Peace Officer Standards and Training Commission" which shall be composed of [nine] **eleven** members, including a voting public member, appointed by the governor, by and with the advice and consent of the senate, from a list of qualified candidates submitted to the governor by the director of the department of public safety. No [member] **two members** of the POST commission shall reside in the same congressional district as any other at the time of their appointments but this provision shall not apply to the public member. Three members of the POST commission shall be police chiefs, three members shall be sheriffs, one member shall represent a state law enforcement agency covered by the provisions of this chapter, **one member shall be a peace officer at or below the rank of sergeant employed by a political subdivision with a population of less than ten thousand inhabitants, one member shall be a peace officer at or below the rank of sergeant employed by a political subdivision with a population of at least ten thousand inhabitants**, and one member shall be a chief executive officer of a certified training academy. The public member shall be at the time of appointment a registered voter; a person who is not and never has been a member of any profession certified or regulated under this chapter or the spouse of such person; and a person who does not have and never has had a material financial interest in either the providing of the professional services regulated by this chapter, or an activity or organization directly related to any profession certified or regulated under this chapter.

Each member of the POST commission shall have been at the time of his appointment a citizen of the United States and a resident of this state for a period of at least one year, and members who are peace officers shall be qualified as established by this chapter. No member of the POST commission serving a full term of three years may be reappointed to the POST commission until at least one year after the expiration of his most recent term.

2. Three of the original members of the POST commission shall be appointed for terms of one year, three of the original members shall be appointed for terms of two years, and three of the original members shall be appointed for terms of three years. Thereafter the terms of the members of the POST commission shall be for three years or until their successors are appointed. The director may remove any member of the POST commission for misconduct or neglect of office. Any member of the POST commission may be removed for cause by the director but such member shall first be presented with a written statement of the reasons thereof, and shall have a hearing before the POST commission if the member so requests. Any vacancy in the membership of the commission shall be filled by appointment for the unexpired term. **No two members of the POST commission shall be employees of the same law enforcement agency.**

3. Annually the director shall appoint one of the members as chairperson. The POST commission shall meet at least twice each year as determined by the director or a majority of the members to perform its duties. A majority of the members of the POST commission shall constitute a quorum.

4. No member of the POST commission shall receive any compensation for the performance of his official duties.

5. The POST commission shall guide and advise the director concerning duties pursuant to this chapter.

590.180. 1. No arrest shall be deemed unlawful solely because of the licensure status of a peace officer, and evidence on the question cannot be received in any civil or criminal case.

2. The name, licensure status, and commissioning or employing law enforcement agency, if any, of applicants and licensees pursuant to this chapter shall be an open record. All other records retained by the director pertaining to any applicant or licensee shall be confidential and shall not be disclosed to the public or any member of the public, except with written consent of the person or entity whose records are involved, provided, however, that the director may disclose such information in the course of voluntary interstate exchange of information, during the course of litigation involving the director, to other state agencies, or, upon a final determination of cause to discipline, to law enforcement agencies. No closed record conveyed to the director pursuant to this chapter shall lose its status as a closed record solely because it is retained by the director. Nothing in this section shall be used to compel the director to disclose any record subject

to attorney-client privilege or work-product privilege.

3. In any investigation, hearing, or other proceeding pursuant to this chapter, any record relating to any applicant or licensee shall be discoverable by the director and shall be admissible into evidence, regardless of any statutory or common law privilege or the status of any record as open or closed, including records in criminal cases whether or not a sentence has been imposed. No person or entity shall withhold records or testimony bearing upon the fitness to be commissioned as a peace officer of any applicant or licensee on the ground of any privilege involving the applicant or licensee, with the exception of attorney-client privilege.

4. Any person or entity submitting information to the director pursuant to this chapter and doing so in good faith and without negligence shall be immune from all criminal and civil liability arising from the submission of such information and no cause of action of any nature shall arise against such person.

5. No person shall make any unauthorized use of any testing materials or certification examination administered pursuant to subsection 2 of section 590.030.

6. Notwithstanding any other provision of law to the contrary, the peace officer standards and training commission may inform prospective employers of an applicant's prior employment with law enforcement agencies.

600.042. 1. The director shall:

(1) Direct and supervise the work of the deputy directors and other state public defender office personnel appointed pursuant to this chapter; and [he] **the director** and the chief deputy director may participate in the trial and appeal of criminal actions at the request of the defender or upon order of the commission;

(2) Submit to the commission, between August fifteenth and September fifteenth of each year, a report which shall include all pertinent data on the operation of the state public defender system, the costs, projected needs, and recommendations for statutory changes. Prior to October fifteenth of each year, the commission shall submit such report along with such recommendations, comments, conclusions, or other pertinent information it chooses to make to the chief justice, the governor, and the general assembly. Such reports shall be a public record, shall be maintained in the office of the state public defender, and shall be otherwise distributed as the commission shall direct;

(3) With the approval of the commission, establish such divisions, facilities and offices and select such professional, technical and other personnel, including investigators, as [he] **the director** deems reasonably necessary for the efficient operation and discharge of the duties of the state public defender system under this chapter;

(4) Administer and coordinate the operations of defender services and be responsible for the overall supervision of all personnel, offices, divisions and facilities of the state public defender system, except that the director shall have no authority to direct or control the legal defense provided by a defender to any person served by the

state public defender system;

(5) Develop programs and administer activities to achieve the purposes of this chapter;

(6) Keep and maintain proper financial records with respect to the providing of all public defender services for use in the calculating of direct and indirect costs of any or all aspects of the operation of the state public defender system;

(7) Supervise the training of all public defenders, assistant public defenders, deputy public defenders and other personnel and establish such training courses as shall be appropriate;

(8) With approval of the commission, promulgate necessary rules, regulations and instructions consistent with this chapter defining the organization of [his] **the director's** office and the responsibilities of public defenders, assistant public defenders, deputy public defenders and other personnel;

(9) With the approval of the commission, apply for and accept on behalf of the public defender system any funds which may be offered or which may become available from government grants, private gifts, donations or bequests or from any other source. Such moneys shall be deposited in the state general revenue fund;

(10) Contract for legal services with private attorneys on a case-by-case basis and with assigned counsel as the commission deems necessary considering the needs of the area, for fees approved and established by the commission;

(11) With the approval and on behalf of the commission, contract with private attorneys for the collection and enforcement of liens and other judgments owed to the state for services rendered by the state public defender system.

2. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

3. The director and defenders shall, within guidelines as established by the commission and as set forth in subsection 4 of this section, accept requests for [legal services] **representation** from eligible persons entitled to counsel under this chapter or otherwise so entitled under the constitution or laws of the United States or of the state of Missouri and provide such persons with [legal services] **representation** when, in the discretion of the director or the defenders, such provision of [legal services] **representation** is appropriate.

4. The director and defenders shall provide [legal services] **representation** to an eligible person:

(1) Who is detained or charged with a felony, including appeals from a conviction in such a case;

(2) Who is detained or charged with a misdemeanor which will probably result in confinement in the county jail upon conviction, including appeals from a conviction

in such a case;

(3) Who is detained or charged with a violation of probation or **judicial** parole;

(4) Who has been taken into custody pursuant to section 632.489, RSMo, including appeals from a determination that the person is a sexually violent predator, notwithstanding any provisions of law to the contrary;

(5) Who is in the custody of the Missouri department of corrections and is seeking post conviction relief pursuant to section 547.360 or 547.370, RSMo, including appeals from a denial of post conviction relief as provided in those same sections; and

(6) Who is in the custody of the Missouri department of corrections and has been granted a hearing pursuant to subsection 6 of section 547.035, RSMo, and has been determined by the defender to be indigent as provided in this chapter; and

(7) Who is an indigent committed person seeking conditional or unconditional release under section 552.040, RSMo; and

[(5)] (8) For whom the federal [constitution] or [the] state constitution requires the appointment of counsel **in a criminal case**; and

[(6)] (9) For whom, in a case in which he **or she** faces a loss or deprivation of liberty, any [law] **statute** of this state **specifically enumerated in this section, or supreme court rule** requires the appointment of counsel; however, the director and the defenders shall not be required to provide [legal services] **representation** to persons charged with violations of county or municipal ordinances, **or for any termination of parental rights case.**

5. The director may:

(1) Delegate the legal representation of any person to any member of the state bar of Missouri;

(2) Designate persons as representatives of the director for the purpose of making indigency determinations and assigning counsel.

600.086. 1. A person shall be considered eligible for representation under sections 600.011 to 600.048 and 600.086 to 600.096 when it appears from all the circumstances of the case including [his] **such person's** ability to make bond, [his] **such person's** income **and assets** and the number of persons dependent on [him] **such person** for support that the person does not have the means at his **or her** disposal or available to him **or her** to obtain counsel in his **or her** behalf and is indigent as hereafter determined.

2. Within the parameters set by subsection 1 of this section, the commission may establish and enforce such further rules for courts and defenders in determining indigency as may be necessary.

3. The determination of indigency of any person seeking the services of the state public defender system shall be made by the defender or anyone serving under [him] **the**

defender at any stage of the proceedings. Upon motion by either party, the court in which the case is pending shall have authority to determine whether the services of the public defender may be utilized by the defendant. Upon the courts finding that the defendant is not indigent, the public defender shall no longer represent the defendant. Any such person claiming indigency shall file with the court an affidavit which shall contain the factual information required by the commission under rules which may be established by the commission in determining indigency.

4. Any person who intentionally falsifies such affidavit in order to obtain state public defender system services shall be guilty of a class A misdemeanor.

5. The director or anyone serving under [him] **the director** may institute an investigation into the financial status of any person seeking the services of the state public defender system at such times as the circumstances shall warrant. In connection therewith he **or she** shall have the authority to require any person seeking the services of the state public defender system or the parents, guardians or other persons responsible for the support of a person seeking the services of the state public defender system who is a minor or those persons holding property in trust or otherwise for such person to execute and deliver such written authorization as may be necessary to provide the director or anyone serving under [him] **the director** with access to records of public or private sources, otherwise confidential, or any other information which may be relevant to the making of a decision as to eligibility under this chapter. The director, chief deputy director, each public defender and each assistant and deputy public defender or designee are authorized to obtain information from any office of the state or any subdivision, or agency thereof or political subdivision on request and without payment of any fees. Any office of the state or any subdivision, or agency thereof or political subdivision from which the director, chief deputy director, public defender and each assistant and deputy public defender or designee requests information pursuant to this section shall supply such information, without payment of any fees.

6. The burden shall lie on the accused or the defendant to convince the defender or the [court] **director** of his **or her** eligibility to receive legal services, in any conference, hearing or question thereon. **If at any time prior to ten days before trial an accused or defendant becomes financially able or has the means to acquire counsel, the director of the Missouri state public defender system may file a motion with the court for leave to withdraw representation. The court shall grant the motion unless the court determines that such withdrawal of representation would adversely affect the substantial rights of the defendant or interfere with the orderly administration of justice. If the court fails to grant leave to withdraw, the director may apply to the court at the conclusion of the case for an order directing the defendant or accused to reimburse the state public defender system for the costs of representation, which order shall constitute a judgment against the defendant or**

accused.

650.055. 1. Every individual who pleads guilty or nolo contendere to or is convicted in a Missouri circuit court, of a felony or any offense under chapter 566, RSMo, or has been determined beyond a reasonable doubt to be a sexually violent predator pursuant to sections 632.480 to 632.513, RSMo, shall have a blood or scientifically accepted biological sample collected for purposes of DNA profiling analysis:

(1) Upon entering the department of corrections reception and diagnostic centers; or

(2) Before release from a county jail or detention facility, state correctional facility or any other detention facility or institution, or any mental health facility if committed as a sexually violent predator pursuant to sections 632.480 to 632.513, RSMo; or

(3) When the state accepts a person from another state under any interstate compact, or under any other reciprocal agreement with any county, state, or federal agency, or any other provision of law, whether or not the person is confined or released, the acceptance is conditional on the person providing a DNA sample if the person was convicted of, pleaded guilty to, or pleaded nolo contendere to an offense in any other jurisdiction which would be considered a qualifying offense as defined in this section if committed in this state, or if the person was convicted of, pleaded guilty to, or pleaded nolo contendere to any equivalent offense in any other jurisdiction; or

(4) If such individual is under the jurisdiction of the department of corrections . Such jurisdiction includes persons currently incarcerated, persons on probation, as defined in section 217.650, RSMo, and on parole, as also defined in section 217.650, RSMo.

2. The Missouri state highway patrol and department of corrections shall be responsible for ensuring adherence to the law. Any person required to provide a DNA sample pursuant to this section shall be required to provide such sample, without the right of refusal, at a collection site designated by the Missouri state highway patrol and the department of corrections. Authorized personnel collecting or assisting in the collection of samples shall not be liable in any civil or criminal action when the act is performed in a reasonable manner. Such force may be used as necessary to the effectual carrying out and application of such processes and operations. The enforcement of these provisions by the authorities in charge of state correctional institutions and others having custody or jurisdiction over those who have been convicted of, pleaded guilty to, or pleaded nolo contendere to felony offenses which shall not be set aside or reversed is hereby made mandatory. The board of probation or parole shall recommend that an individual who refuses to provide a DNA sample have his or her probation or parole revoked. In the event that a person's DNA sample is not adequate for any reason, the

person shall provide another sample for analysis.

3. The procedure and rules for the collection, analysis, storage, expungement, use of DNA database records and privacy concerns shall not conflict with procedures and rules applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's DNA data bank system.

4. Unauthorized uses or dissemination of individually identifiable DNA information in a database for purposes other than criminal justice or law enforcement is a class A misdemeanor.

5. Implementation of section 650.050 and this section shall be subject to future appropriations to keep Missouri's DNA system compatible with the Federal Bureau of Investigation's DNA data bank system.

6. All DNA records and biological materials retained in the DNA profiling system are considered closed records pursuant to chapter 610, RSMo. All records containing any information held or maintained by any person or by any agency, department, or political subdivision of the state concerning an individual's DNA profile shall be strictly confidential and shall not be disclosed, except to:

(1) Peace officers, as defined in section 590.010, RSMo, and other employees of law enforcement agencies who need to obtain such records to perform their public duties;

(2) The attorney general or any assistant attorneys general acting on his or her behalf, as defined in chapter 27, RSMo;

(3) Prosecuting attorneys or circuit attorneys as defined in chapter 56, RSMo, and their employees who need to obtain such records to perform their public duties; or

(4) Associate circuit judges, circuit judges, judges of the courts of appeals, supreme court judges, and their employees who need to obtain such records to perform their public duties.

7. Any person who obtains records pursuant to the provisions of this section shall use such records only for investigative and prosecutorial purposes, including but not limited to use at any criminal trial, hearing, or proceeding; or for law enforcement identification purposes, including identification of human remains. Such records shall be considered strictly confidential and shall only be released as authorized by this section.

8. An individual may request expungement of his or her DNA sample and DNA profile through the court issuing the reversal or dismissal. A certified copy of the court order establishing that such conviction has been reversed or guilty plea or plea of nolo contendere has been set aside shall be sent to the Missouri state highway patrol crime laboratory. Upon receipt of the court order, the laboratory will determine that the requesting individual has no other qualifying offense as a result of any separate plea or conviction prior to expungement.

(1) A person whose DNA record or DNA profile has been included in the state

DNA database in accordance with this section, section 488.5050, RSMo, and sections 650.050, 650.052, and 650.100 may request expungement on the grounds that the conviction has been reversed, or the guilty plea or plea of nolo contendere on which the authority for including that person's DNA record or DNA profile was based has been set aside.

(2) Upon receipt of a written request for expungement, a certified copy of the final court order reversing the conviction or setting aside the plea and any other information necessary to ascertain the validity of the request, the Missouri state highway patrol crime laboratory shall expunge all DNA records and identifiable information in the database pertaining to the person and destroy the DNA sample of the person, unless the Missouri state highway patrol determines that the person is otherwise obligated to submit a DNA sample. Within thirty days after the receipt of the court order, the Missouri state highway patrol shall notify the individual that it has expunged his or her DNA sample and DNA profile, or the basis for its determination that the person is otherwise obligated to submit a DNA sample.

(3) The Missouri state highway patrol is not required to destroy any item of physical evidence obtained from a DNA sample if evidence relating to another person would thereby be destroyed.

(4) Any identification, warrant, arrest, or evidentiary use of a DNA match derived from the database shall not be excluded or suppressed from evidence, nor shall any conviction be invalidated or reversed or plea set aside due to the failure to expunge or a delay in expunging DNA records.

9. Notwithstanding the sovereign immunity of the state, an individual who, **after August 28, 2000**, is determined to be "actually innocent" of a crime may be paid restitution in accordance with this subsection. The individual may receive an amount of fifty dollars per day for each day of postconviction incarceration for the crime for which the individual is determined to be actually innocent. The petition for the payment of said restitution shall be filed with the sentencing court within [one year] **five years** of the release from confinement [after August 28, 2003]. For the purposes of this subsection the term "actually innocent" shall mean:

(1) The individual was convicted of a felony for which a final order of release was entered by the court;

(2) All appeals of the order of release have been exhausted;

(3) The individual was not serving any term of a sentence for any other crime concurrently with the sentence for which they are determined to be actually innocent; and

(4) Testing ordered pursuant to section 547.035, RSMo, demonstrates a person's innocence of the crime for which the person is in custody.

An individual who receives restitution pursuant to this subsection shall be prohibited from seeking any civil redress from the state, its departments and agencies, or any employee thereof, or any political subdivision or its employees. This subsection shall not be construed as a waiver of sovereign immunity for any purposes other than the restitution provided for herein. All restitution paid pursuant to this subsection shall be paid from moneys in the DNA profiling analysis fund. The department shall determine the aggregate amount of restitution owed during a fiscal year. If moneys remain in the fund on June thirtieth of each fiscal year, the remaining moneys shall be used to pay restitution to those individuals who have received an order awarding restitution under this subsection during the past fiscal year. If insufficient moneys remain in the fund on June thirtieth of each fiscal year to pay restitution to such persons, the department shall pay each individual who has received an order awarding restitution a pro rata share of the amount such person is owed. The remaining amounts owed to such individual shall be paid from the fund on June thirtieth of each subsequent fiscal year, provided moneys remain in the fund on June thirtieth, until such time as the restitution to the individual has been paid in full. No interest on unpaid restitution shall be awarded to the individual. If there are no moneys remaining in the DNA profiling analysis fund, then no payments shall be made under this subsection. No individual who has been determined by the court to be actually innocent shall be responsible for the costs of care under section 217.831, RSMo.

10. If the results of the DNA testing confirm the person's guilt, then the person filing for DNA testing under section 547.035, RSMo, shall:

(1) Be liable for any reasonable costs incurred when conducting the DNA test, including but not limited to the cost of the test. Such costs shall be determined by the court and shall be included in the findings of fact and conclusions of law made by the court; and

(2) Be sanctioned under the provisions of section 217.262, RSMo.

Section 1. 1. No court or state or local agency shall post the home address, Social Security number, or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of such official.

2. No person shall knowingly post the home address, Social Security number, or telephone number of any elected or appointed official, or of such official's residing spouse or child on the Internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to such official, spouse, or child. Any person who violates this subsection is guilty of a class C misdemeanor.

3. For purposes of this section, "elected or appointed official" includes but is not limited to all of the following:

- (1) State constitutional officers;**
- (2) Members of the Missouri general assembly;**
- (3) Judges, court commissioners, and circuit clerks;**
- (4) Directors of state departments;**
- (5) Prosecuting attorneys and assistant prosecuting attorneys;**
- (6) Public defenders;**
- (7) County commissioners;**
- (8) Members of a city council;**
- (9) Mayors;**
- (10) City attorneys and county counselors;**
- (11) Police chiefs and sheriffs;**
- (12) Peace officers under chapter 590, RSMo;**
- (13) Probation and parole officers, and members of the parole board.**

4. Upon becoming aware that his or her home address, Social Security number, or telephone number has been made available over the Internet, any person covered by this section shall inform the court or state or local agency of such fact and request removal of such information. Upon becoming aware, the failure of a person covered by this section to notify a state or public agency shall relieve such agency of the obligation to remove prohibited information.

Section 2. No bank or lending institution that makes residential loans and imposes a fee of less than two hundred dollars for completing a residential loan application form for a residential loan applicant shall be deemed to be engaging in the unauthorized practice of law.

Section 3. Beginning January 1, 2007, there is hereby created a state-funded family court commissioner position in the twenty-ninth judicial circuit.

Section 4. Beginning January 1, 2007, there is hereby created a state-funded drug court commissioner position in the forty-second judicial circuit.

Section 5. Any drug court commissioner authorized pursuant to section 478.001, RSMo, and appointed in the twenty-third judicial circuit pursuant to section 478.003, RSMo, shall be a state-funded position.

[483.260. The clerk of the circuit court of the city of St. Louis may employ an attorney or attorneys to aid and advise him in the discharge of his duties, to render independent legal advice and services and to represent him in court. The attorneys employed by the clerk shall receive in the aggregate as compensation for their services twenty-five thousand dollars per annum, payable out of the state treasury in installments as certified by the circuit clerk.]